

Message Text

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ACTION NEA-10

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INFO AMEMBASSY TEL AVIV

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C O N F I D E N T I A L JERUSALEM 546

E.O. 11652: GDS

TAGS: PBOR, PDEV, IS, JO

SUBJ: LAND EXPROPRIATION ON THE WEST BANK

REF: (A) JERUSALEM 383; (B) TEL AVIV 1927; (C) JERUSALEM 425

1. WITH POSSIBLE EXCEPTION OF AGMIN SHARON, MAJOR MINISTERS OF GOI HAVE CONSISTENTLY MAINTAINED THAT SETTLEMENT IN THE OCCUPIED TERRITORIES HAS NOT INVOLVED AND WILL NOT INVOLVE EXPROPRIATIONS. DEPUTY DEFENSE MINISTER TZIPORI RECENTLY REASSURED EMBOFF THAT EXPANSION OF PERIMETER AT NABI SALIH INVOLVES ONLY STATE LANDS (REF A AND B) WHILE ATTORNEY GENERAL BARAK REPORTEDLY HAS CONCLUDED, ON BASIS OF SPECIAL SURVEY, THAT NO SETTLEMENTS IN JUDEA AND SAMARIA ARE LOCATED ON ON EXPROPRIATED LAND (MA'ARIV, JANUARY 20, 1978).

2. LOCAL ARABS DISAGREE WITH GOI VIEW IN MANY INSTANCES, MOST RECENTLY AT NABI SALIH, HARIS, TAPUAH, NAHAL MA'ALEH (SILAT AZ ZAHAR) AND SAL'TT. IN ALL OF THESE PLACES, LOCAL ARABS HAVE TOLD CONGEN OFFICER THAT LAND BELONGING TO INDIVIDUALS OR THE VILLAGE HAD BEEN "EXPROPRIATED" FOR THE NEW SETTLEMENTS (SEE JERUSALEM 425). RARELY, CAN THE LOCAL ARABS PRODUCE AN ACTUAL TITLE TO THE LAND; THOUGH OFTEN, THEY CAN PRODUCE
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RECORDS OF TAX PAYMENTS.

3. THROUGH THE QUAKER LEGAL AID OFFICE, WE HAVE RAISED THIS QUESTION WITH TWO PALESTINIAN EXPERTS: THE DIRECTOR OF THE LAND SURVEY OFFICE IN RAMALLAH AND A LOCAL ATTORNEY WHO HAS BEEN ENGAGED TO DEFEND RIGHTS OF ARABS WHO CLAIM LAND BEING "EXPROPRIATED" NEAR MA'ALE ADUMIN. FOLLOWING IS THEIR UNDER-

STANDING:

(A) "TURKISH LAW" RESERVED FOR STATE ALMOST ALL UNIMPROVED, I.E. UNPLANTED OR UNBUILT-UPON LAND, BUT ALLOWED FOR ITS COMMUNAL AND INDIVIDUAL USE, E.G. FOR PASTURAGE.

(B) THE BRITISH MANDATE" IN ITS LAND SURVEY OF 1935-1936 FORMALLY ALLOCATED LANDS ACCORDING TO TRADITIONAL USE. FOR CULTIVATED LANDS, THIS SURVEY CONFIRMED RIGHTS OF OWNERSHIP AND DETERMINED ONE TAX LEVY. FOR UNIMPROVED LAND, THIS SURVEY USUALLY CONFIRMED RIGHTS OF USE (ACCORDING TO OUR LAWYER) OR OWNERSHIP (ACCORDING TO LAND SURVEY OFFICIAL) AND DETERMINED VARIOUS OTHER TAX LEVIES.

(C) "JORDANIAN LAW" AFFIRMED PAST PRACTICE, BUT SPECIFIED THAT TAX PAYMENTS ON UNIMPROVED LAND DID NOT REPEAT NOT NECESSARILY CONVEY RIGHTS OF OWNERSHIP (ACCORDING TO OUR LAWYER).

3. CASE FOR EITHER ARAB OR ISRAELI VIEW IS EVIDENT, BUT FOLLOWING POINTS SEEM SALIENT TO US:

(A) STATE-OWNED VS. PRIVATELY-OWNED DISTINCTION IRRELEVANT TO APPLICATION OF GENEVA CONVENTION WHICH PROHIBITS TRANSFERS OF CIVILIAN POPULATION IN EITHER CASE AND ALLOWS FOR APPROPRIATION OR EXPROPRIATION FOR SECURITY REASONS IN EITHER CASE.

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(B) EVEN WHERE OWNERSHIP CANNOT BE PROVED, LOCAL ARABS OFTEN RETAIN RIGHTS OF USE OF STATE LAND CONFIRMED BY PAYMENT OF TAXES. THUS ISRAELI SETTLEMENTS MIGHT LITERALLY DISPOSSESS ARABS EVEN IF EXPROPRIATION TECHNICALLY UNNECESSARY.

(C) EVEN GOI OFFICIAL, E.G. TZIPORI, WOULD PROBABLY NOT DEFEND SETTLEMENT ON PREVIOUSLY CULTIVATED LAND, E.G. SEVERAL PLOTS AT NABI SALIH, BECAUSE OWNERSHIP OF THESE REGISTERED IN THE BRITISH MANDATE LAND SURVEY.

(D) AS LITIGATION COULD TIE UP LANDS FOR SEVERAL YEARS, ISRAELIS MIGHT BE FORCED TO EXPROPRIATE EVEN STATE-LAND AS A PRACTICAL EXPEDIENT.

4. FURTHER CLARIFICATIONS MAY RESULT FROM MA'ALE ADUMIN CASE. QUAKERS ARE ADVISING ARABS IN OTHER DISPUTED LOCALES AS WELL. NEWLIN

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